



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1998

Mr. Todd Blomerth
Blomerth & Payne
103 South Main Street
Lockhart, Texas 78644

OR98-1519

Dear Mr. Blomerth:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115892.

The City of Lockhart (the "city"), which you represent, received a request for a copy "of the rules, regulations and guidelines manual for the Lockhart Police Officers in the performance of their duties as officers in the making of arrests and searches of persons arrested." You have provided the requestor most of the police manual at issue. However, you assert that chapters seven, eight, and ten of the manual are protected from disclosure under section 552.108 of the Government Code, which provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You contend that these three chapters of the manual, which were submitted to this office for review, are protected from disclosure under sections 552.108(a)(1) and 552.108(b)(1).

This office has determined that section 552.108(a)(1) is generally applicable when a governmental body demonstrates that the information at issue pertains to an ongoing criminal investigation or pending criminal case, because release of such related information during the pendency of the investigation or prosecution would interfere with the detection, investigation, or prosecution of crime. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see* Open Records Decision No. 216 (1978) at 3 (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). You state that there is a pending criminal case concerning a criminal defendant who is charged with assaulting a peace officer during a detention and arrest. Based upon your assertion that there is a pending criminal case that implicates detention and arrest procedures, we agree that you may withhold from disclosure chapter eight of the manual, which generally concerns law enforcement procedures including arrest and detention.

However, you have not demonstrated the applicability of section 552.108(a)(1) to chapter seven, which concerns the use of force and deadly force by police officers, and chapter ten, which concerns the department's procedures and policies when dealing with

family violence situations. You do not assert that the pending criminal case implicates the police department's use of force or deadly force by police officers, or a family violence situation. We will address your section 552.108(b)(1) argument concerning chapters seven and ten of the manual.

Section 552.108(b)(1) excepts from disclosure internal records of law enforcement agencies when the information is maintained for internal use in matters relating to law enforcement if release would interfere with law enforcement or prosecution. You state that release "may equip the public, and in particular, criminals, with guidance as to the type of conduct which an officer must tolerate before he may exercise the use of force, and have the effect of encouraging these individuals to tailor their behavior accordingly." In Open Records Decision No. 531 (1989) at 3, this office discussed how release of "highly specific guidelines for police officers confronted by violence or threatened violence when effecting an arrest or protecting the public safety" could interfere with law enforcement interests. We stated that release of such information, when not otherwise generally publicly available, could provide criminals an advantage in evading arrest and possibly also increase the chance of injury to others. *Id.* We agree that you have demonstrated how section 552.108(a)(b) is applicable to chapters seven and ten of the manual. Thus, the three chapters at issue may be withheld from disclosure under section 552.108(a)(1) and (b)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115892

Enclosures: Submitted documents

cc: Mr. Dan McCormack
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(w/o enclosures)